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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th December 2008

No. 12401-1i/1(B)-158/1992(pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th November 2008 in Industrial Dispute Case No. 55/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of M/s Orissa Textile Mills Ltd., Choudwar, Dist. Cuttack and its Workman Shri Sashadhar Biswal was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 55 OF 2008

Dated the 24th November 2008

Present:

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between:

The Managing Director, ... First Party—Management
M/s Orissa Textile Mills Ltd., Choudwar,
At/Post/P.S. Choudwar, Dist. Cuttack.

And

Shri Sashadhar Biswal, ... Second Party—Workman
Assistant Condensor Attendant,
Orissa Textile Mills Ltd., Choudwar,
Qr. No. 79/3, O. T. M. Labour Colony, Choudwar,
At/Post/P.S. Choudwar, Dist. Cuttack.

Appearances :

For the First Party—Management ..	None
For the Second Party—Workman ..	Shri Satyabadi Mishra, Advocate

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 973—li/1(B)-158/1992-L.E., dated the 21st January 1995 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008.

“Whether the dismissal of Shri Sashadhar Biswal, Assistant Condensor Attendant from service by the Management of M/s O. T. M. Ltd., Choudwar with retrospective effect from the 17th October 1985 vide Order No. OT-61A/2004, dated the 10th February 1986 was legal and/or justified ?

If not, to what relief the workman is entitled for the service discontinuity period from the 17th October 1985 to the 31st December 1988 ?”

2. The case of the workman in brief is that he joined the services of the management on the 12th September 1977 and subsequently he became regular in the post of Assistant Condensor Attendant with effect from the 22nd February 1978. It is pleaded that basing on some unfounded allegations the management suspended him from service and charge sheeted vide Letter No. 12702, dated the 16th October 1985 to which he submitted reply on the 18th October 1985 denying the charges but as the management was determined to impose punishment on him it did not take into consideration his explanation and ordered for an enquiry. It is alleged that the enquiry conducted against the workman was an empty formality and was not conducted according to the principles of natural justice. It is further alleged that the workman was not paid subsistence allowance during the period he remained under suspension and the order of dismissal was passed against the second party without taking into consideration his show-cause submitted to the disciplinary authority on the 7th February 1986. It is averred that as the workman was an active member of the Sanjukta Sramajivi Sanghatan and was protesting against the illegal action of the management, he suffered the punishment of dismissal from service. While admitting that he has been allowed to work by the management with effect from the 1st January 1989, he has claimed to declare the action of the management in dismissing him from service from the 17th October 1985 till the 31st December 1988 as illegal and unjustified.

3. While admitting about the engagement of the workman with effect from the 1st January 1989 the management filed its written statement stating therein *inter alia* that since the management after holding a disciplinary enquiry into the misconduct of the workman had imposed the punishment of dismissal from service, the reference may kindly be answered in the negative.

4. On the aforesaid pleadings of the parties, the following issues have been farmed :—

ISSUES

- (i) Whether the dismissal of the second party workman from the service by the first party management with retrospective effect from the 17th October 1985 was legal and/or justified ?
- (ii) If not, to what relief the workman is entitled for the service discontinuity period from the 17th October 1985 to the 31st December 1988 ?

5. During hearing of the case, the management did not chose to appear and accordingly it was set *ex parte* vide Order No. 23, dated the 20th November 1999. In the *ex parte* hearing, the workman examined himself and brought on record as many as six documents, which have been marked as Exts. 1 to 6.

6. In his unchallenged evidence the workman has stated some previous incidents wherein he was suspended and charge sheet was issued against him but subsequently he was allowed to join his duty. Exts. 1 to 5 are such documents relating to previous occurrences. It is the specific evidence of the workman that before terminating his service with effect from the 17th October 1985 neither a proper enquiry was held nor he was supplied with a copy of the enquiry report to have his say against the finding of the Enquiry Officer. The workman has claimed for his back wages and all consequential service benefits for the period from the 17th December 1985 i. e., the date of his dismissal from service till the 31st December 1988 and not thereafter because of his reinstatement in service with effect from the 1st January 1989.

7. Upon perusing the evidence adduced by the workman and further in absence of any contrary evidence adduced by the adversary, it is held that the services of the workman was terminated without holding a proper enquiry and thereby the management has violated the principles of natural justice. Hence, the workman is held entitled to all service benefits for the period he remained out of employment, but not back wages as he has not brought in evidence that during the period he was not gainfully employed elsewhere.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
24-11-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
24-11-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government